

**SOUTH DAKOTA  
STATE PLANNING REPORT  
to the  
LEGAL SERVICES CORPORATION**

**South Dakota Legal Services Programs:**

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## **PART A. PLANNING PROCESS and PARTICIPANTS**

**Participants in the planning process included the Executive Directors of the state's three legal services programs, as well as key staff and board members. Also participating were officers of the State Bar Association, members of the state and tribal bars, members of the state and tribal judiciary, and interested tribal and community leaders. The process consisted of a series of meetings across the state in which the participants discussed various issues facing legal services in South Dakota, and how best to deal with them on a statewide level.**

## **PART B. SEVEN AREAS**

**BACKGROUND:** To fully understand the responses below, it is necessary to briefly review the geography of the state of South Dakota; the ethnic and cultural differences across the state; and the jurisdictional areas resulting from the existence of nine separate, independent Indian reservations. The poorest county in the nation, Shannon County, is located on the Pine Ridge Indian Reservation and is part of the Dakota Plains Legal Services service area. These factors constitute a situation unique to South Dakota and exert a tremendous impact upon the state planning process.

**South Dakota is over 400 miles in length and 250 miles in width; statewide travel for any purpose is arduous, time-consuming and expensive. Weather conditions can render travel unpredictable and dangerous. Geographically, South Dakota is essentially divided up the middle by the Missouri River. East of the river the land is far more suitable for cultivation and farming; west-river the climate is drier, and ranching is the principal**

agricultural activity. This has resulted in noticeable cultural differences between these two regions. In addition a third area, consisting of the far western counties and containing the Black Hills, has an even different history, industry and cultural perspective. This area is supported primarily by mining, timber and tourism.

Similar differences are likely to be found in other states. However, South Dakota is unique because of the existence of nine separate and independent Indian tribes, each with its own government, history, culture, code of laws, and fully-operating judicial system. As a non-P.L. 280 state, the State's laws generally do not apply to tribal members residing in Indian Country. Despite the Governor's proclamation of 1990 as the "Year of Reconciliation," there still exists a significant lack of trust and cooperation between the state and tribal governments.

These factors have resulted in the growth and development of three separate legal services programs in South Dakota. East River Legal Services (hereafter "ERLS"), with its office in Sioux Falls, covers essentially the eastern (agricultural) portion of the state. In the far west, Black Hills Legal Services ("BHLS"), with its office in Rapid City, uses a direct-services approach; its smaller geographical area permits BHLS to operate with only one centrally-located office. Dakota Plains Legal Services ("DPLS") covers the balance of the state, comprising essentially the western and central portion (and including one county in North Dakota and 3 in the northeast corner). Importantly, DPLS provides services in areas containing eight of the nine Indian reservations using a staff-attorney delivery model.

**1) Intake, Advice and Referral:**

***Current structure:*** There is no uniform system of intake and delivery of advice and referral services in South Dakota. Each of the three programs operates independently from the others and has their own established set of priorities that address the needs of clients in their respective service areas. ERLS, a Judicare program, accepts applications from "walk-ins" at its office in Sioux Falls, and operates a telephone intake system for the balance of its 33-county service area. Its staff attorneys and paralegals provide direct services within the city of Sioux Falls and also provides advice and referral services to those who call. For direct services outside the Sioux Falls metropolitan area, ERLS maintains an extensive Judicare panel of attorneys.

BHLS accepts "walk-ins" at its Rapid City office and "circuit rides" to its outlying communities. BHLS also maintains a toll-free telephone intake system, providing advice and referral services to those unable to visit the office personally.

DPLS accepts "walk-ins" at its various branch offices as its primary intake system, and regularly sends a representative to the Wagner area to provide services to persons on or near the Yankton Sioux Reservation and circuit rides to other areas from its branch offices. The areas served by DPLS include the most remote and most destitute locations in the nation. Despite the obvious difficulties of obtaining transportation to a DPLS office, the inability of the client population to obtain or retain personal telephone service renders reliance on any form of telephone-based delivery model unreliable at best. Receiving telephone intake under such circumstances is difficult; returning such a call is frequently impossible. According to the 1995 Census Bureau Report on Status of American Indians'

**Housing on Reservations, a majority (53%) of American Indian homes did not have telephones. Nationally only 5% of all households did not have telephones.**

**In addition to the "circuit riding" described, DPLS and BHLS provide such outreach services as time and budgetary considerations permit, including visits to the homebound, the institutionalized, and to various groups and organizations.**

**The emphasis on the traditional in-office visit best suits the needs of the client communities. No form of state-wide or centralized telephone intake system is yet feasible in South Dakota because of the lack of telephone services in the poorer areas, and especially because of the numerous tribal jurisdictions with differing laws existing across the state. On the contrary, under these special circumstances, in-office visits with specially-trained advocates familiar with local, state, federal and tribal laws is the only effective delivery method.**

**There remains a lack of information and communication between the three programs in the referral process. The intake staff are unaware of the other programs' priorities, policies, and procedures relating to intake, referral and advice. There is no uniform system of client referral between them. Each program has (understandably) concentrated its efforts upon its own client population and local problems, but this is typical of the approach taken by other organizations across the state. For example, there is no statewide *pro bono* program, and the four such programs that do exist have little interaction between themselves or with the legal services programs.**

**The three programs are currently working to develop a statewide system of referral between them. A proposed referral agreement has been prepared and will be reviewed by**

the governing boards.

The three programs are optimistic that there will be greater involvement by the State Bar Association in fundraising efforts; the passage of court filing-fee legislation benefitting legal services providers; and the establishment of mandatory *pro bono* requirements to ensure greater participation.

## **2. Effective Use of Technology:**

*Current situation:* There is no state technology plan in South Dakota. Each program has developed independently of the others, based upon its own perceived needs, goals and funds. However, this does not imply that the programs are technologically unsophisticated or hopelessly incompatible.

Each program has provided a desktop computer to each case handler, who has the necessary skills and abilities to use it as needed. Both DPLS and BHLS staff use computer software to comply with the LSC timekeeping requirements. DPLS's main administrative office has been networked for years and the program has purchased the necessary hardware to expand this capability to its field offices as well, creating an intranet system which should be operational by the end of 1998. BHLS has recently purchased and installed a new network system for its 7 staff members, in addition to obtaining the latest in desktop computing capabilities. As funding permits, the programs are purchasing laptop computers for staff use away from the office.

Each program has E-mail and Internet access for each of its principal administrative and management staff. BHLS has provided these capabilities to each staff

member, while DPLS has been hampered by the failure of the local telephone companies in its outlying areas to provide any Internet access whatsoever. Only recently has this been available statewide, and DPLS is working to provide this capability to each branch office.

Besides computer technologies and equipment, each office has fax machines to permit instantaneous review of pleadings, as well as other equipment such as scanners, copiers, and document assembly technology.

In 1998 DPLS almost wholly abandoned the purchase of paper-based legal research materials, relying entirely on an unlimited, flat-rate WestLaw package which has been provided to each attorney. This drastic step was less necessary for ERLS and BHLS, as they enjoy the benefit of other library resources within their communities.

No program has a current plan to establish a website available to the public for the purpose of dispensing legal education and *pro se* materials over the Internet. However, some material is posted there already. The South Dakota Bar Association has an informative and useful site, providing a few of the many pamphlets and brochures previously available only in printed form. The state's judicial system also provides some helpful information. It may be possible that this website could be expanded to include information about the legal services programs in the state as well as material that would be helpful to our clients and PAI, Judicare and *pro bono* attorneys.

*Strengths of current situation:* Just as legal services workers have become more adept with computer technology, so has computer hardware and software become more "user friendly" over the years. This is reflected by the increasing compatibility between different systems and computer programs. Although the three South Dakota programs are

not currently interfaced with each other, we do have the capability to share information via e-mail and fax when requests are made.

***Weakness of current situation:*** The sharing of *pro se* materials is hampered by the lack of acceptance of the same by the State Bar. South Dakota does not have, nor likely condone at this time, officially sanctioned *pro se* forms beyond the usual Small Claims Court and Protection Order materials.

***Goals and steps to be taken:*** The programs should work with the State Bar to accelerate the acceptance and use of *pro se* materials in routine matters such as "simple" divorces. The State Bar Association already has a committee which studies this issue and the programs could facilitate the communication of ideas and experiences between the State and Tribal bars. The programs should also work with the State Bar to expand their website to include information about the three South Dakota legal services programs along with material that would be helpful to our clients and PAI, Judicare and *pro bono* attorneys.

### **3) Access to the Courts, Self-Help and Preventive Education**

***Current Situation:*** The major barriers affecting access to the courts by low-income persons varies considerably by area across the state. The factors which have the greatest impact were outlined in the background discussion above, but generally include problems of transportation, the lack of *pro se* processes, the dearth of attorneys in many remote areas, and the failure of the Bar to provide an organized, quantifiable *pro bono* program.



Outside the cities of Sioux Falls and Rapid City, there is limited rural public transportation in the state. This can seriously hinder the ability of a poor person to participate in litigation, especially that which is venued in a distant county. This problem assumes a different guise on the Indian reservations, where the "hiring" of a car is frequently possible, but at \$20 or more per occasion the cost can be prohibitive.

The rejection, so far, by the State Bar of *pro se* processes significantly hampers the ability of persons to resolve their legal problems, particularly in areas of domestic relations, consumer/collection, and housing. South Dakota did not entertain the idea of *pro se* child support modification proceedings until the process was forced upon it by federal enactments, yet the current system is an excellent example of how effectively routine matters can be handled without legal representation if the courts will only allow it. Unfortunately, the efficacy of even this procedure is seriously impaired by the lack of cooperation between the State and the various Tribal governments, which results in a continuing jurisdictional vacuum when establishing or enforcing child support and paternity matters involving cross-jurisdictional issues.

This is exacerbated by the real dearth of attorneys living and practicing in the state's more remote regions. In several small towns and communities, legal services staff are the only private attorneys available. (Others who may be present are typically employed full-time by institutional clients or governmental agencies, or may be part-time prosecuting attorneys with a high likelihood of a conflict-of-interest in any particular case.) Thus, even were the State Bar to adopt a mandatory, quantifiable *pro bono* requirement, the availability of non-legal-services assistance would not improve on the Indian

Reservations, and other areas, located in South Dakota. (Indeed, sometimes DPLS has difficulty finding counsel to take a case under its PAI program -- when they will be paid -- let alone making a *pro bono* referral.)

This problem is not unique to Indian Country or reservation towns. ERLS, responsible for providing legal services across a large and still sparsely-populated area, constantly struggles to maintain an adequate Judicare panel. Not every farming community has a lawyer willing to assume these duties, even infrequently; the closest available attorney may be many miles, or several counties, away.

The existence of nine separate Tribal judicial systems is both a boon and a bane to access issues. On the positive side, the tribal courts are sometimes less formal. On the negative side, tribal decrees may not be recognized or enforced outside the immediate reservation; a subsequent State court hearing may be necessary to obtain comity, with such a procedure definitely requiring the services of an attorney. (The same is frequently true of state court decrees when enforcement is sought on the reservation.) Thus, no truly statewide educational effort (self-help or preventive education) would be possible, since the information dispensed would be inapplicable to many areas of the state governed by different laws, practices and procedures.

Nonetheless, efforts do exist to provide general self-help and preventive education. The State Bar sponsors an annual "Ask A Lawyer" call-in show on the state's public ration network, with lawyers from all parts of the state appearing to answer caller questions. Regular newspaper columns are written, providing brief advice and referrals. Legal services staff participate in many of these efforts, including those in Indian newspapers and

radio stations. BHLS and the Pennington County bar association, with funding from the State Bar, operate a "Law Line" service whereby people call in to the BHLS office and listen to pre-recorded tapes offering general information on 25 areas of the law.

Additionally, with funding from HUD, BHLS has a Housing Counseling Unit which educates individuals on their options and rights in housing matters.

*Goals and steps to be taken:* Access to the courts will remain a major barrier to low-income persons in the state of South Dakota. The many different jurisdictions, as well as geography itself, will serve to continue these problems and to diminish the success of efforts to resolve them through statewide action.

The programs should renew their existing efforts to provide community education and preventive materials on a local level. This can be augmented by the expansion of the State Bar's website to make this information available to the public. Yet nothing the programs do, whether locally, singly or collectively, will reach the desired audience without appropriate public awareness. Each program has a toll-free telephone number, and the existence of this service should be regularly mentioned -- as a free public service -- by every newspaper, television and radio station in the state. The programs should divide the state's media outlets between them, and designate an individual responsible for regular contact to ensure the notices are promulgated. Such an effort, taking little time and using current staff, would generate a level of awareness, both by the public and by members of the Bar, from which only positive results would flow.

**4) Coordination of Legal Work, Training, Information and Expert Assistance:**

**\_\_\_\_\_Current situation:** All programs make extensive use of national training events, such as those sponsored by LSC, NLADA, PAG, HUD, NAILS (Native American Indian Legal Services), NARF (Native American Rights Fund), and MIE (Management Information Exchange). These are generally high-quality presentations, designed specifically for the legal services worker. The decision whether to send staff to these training events is affected by the program's priorities and training budget.

Fortunately, the State Bar sponsors frequent high-quality and low-cost (free to members) seminars at various locations across the state. These concentrate on issues of state law and are intended for the private practitioner, but nonetheless provide an excellent and inexpensive means to remain current in relevant legal fields. The State CLE Committee is proud of the fact that South Dakota is one of the few remaining states offering free CLE classes; as a result of this policy, attendance is among the highest in the nation.

South Dakota's legal services programs supervise subordinate staff and evaluate training needs in different ways. BHLS and ERLS both operate out of one office which includes the Executive Director, who interacts daily with the case handlers and is extremely knowledgeable about their abilities and deficiencies. DPLS, with its far-flung branch offices, relies on its established practices of regular telephonic contact; case review meetings; and a monthly caseload report. This report is submitted to the program's Litigation Director, a position unique to DPLS, who is charged with supervision of all program legal work and is responsible for assessing the training needs of the staff. In

addition to the Litigation Director, each branch office is assigned a Managing Attorney, who is responsible for the supervision of all subordinate staff, support and advocacy. Yet despite the great distances between DPLS offices, regular supervision and assessment of subordinate staff continues through a variety of means. Staff are in regular contact with each other, and with the Litigation and Executive Directors, discussing ongoing cases, problems and issues. In addition, the DPLS Board of Directors meets quarterly in a central location, which the Managing Attorneys regularly attend, providing yet another opportunity for discussion, review and supervision.

Statewide coordination of legal strategies and techniques in the major legal areas affecting clients statewide has not historically, and is not now, performed among or between the programs because there has been no demonstrated need for the same. Each program serves an area in which legal needs and priorities -- as determined from client surveys and other reliable indicators -- differ from the others. This fact has never come as a surprise considering the great differences in culture, geography and other factors between the respective service areas.

This is not to say that the programs are unaware of significant legal issues being confronted by the others, or that important legal decisions affecting client-eligible populations elsewhere would go unnoticed. The South Dakota bar is small enough that such information still travels quickly enough, for instance through informal discussions between staff by telephone and at the frequent statewide CLEs; through articles in the one newspaper which has a statewide circulation; and particularly from the fact that South Dakota has only one appellate court, resulting in a limited number of written opinions with

which each attorney can easily remain current. There is no reporting of judicial decisions from trial-level courts across the state, and anyway such decisions have no precedential value until they have been reviewed by the state Supreme Court.

However, legal issues affecting DPLS are not necessarily issues that affect the other two programs in the state because of the fact that they are venued in Tribal Court and/or pertain to Indian Law. Special expertise is almost always necessary to provide competent representation to Indian clients as Indian Law is an independent and complex field, based on treaties, and a myriad of federal statutes, as well as the rules of law of the Tribes themselves. The nature and complexity of Indian legal issues make it very difficult and professionally dangerous, for the generalist to undertake representation of any interested party in a case which implicates Indian issues.

It is usual in South Dakota to have local, rather than statewide, control and coordination. This is reflected by the existence of many local bar associations and groups (the Minnehaha County Bar Association covering the immediate Sioux Falls area; the Pennington County Bar Association covering the immediate Rapid City area; the Fall River County Bar Association [Hot Springs]; the Brown County Bar Association [Aberdeen], etc.), while statewide coordination and control is the exception, not the rule. The same is generally true in Indian Country, where each tribe has its own judiciary, bar association, and jurisdictional area in which its decisions apply. Although some tribes have entered into cooperative agreements with others to establish appellate courts which cover more than one jurisdiction, such courts are created for purposes of economy only,

and their decisions generally affect only the reservations from which any particular case arose.

The availability of expert assistance, as needed for any particular matter, has never been a problem for South Dakota legal services providers. The national workshops to which staff are sent provide excellent means for the development of professional networks; indeed, persons considered experts in their areas are sent to these workshops for the purpose of publicizing the availability of their services to those in the field, as well as to provide the instruction. Besides the traditional LSC-funded support centers and experts (regardless of their current status), each program has developed its own network of experts to whom it can turn as necessary. For example, when DPLS chose to commence a voter's rights case in the 1980s, it received the direct assistance of the Native American Rights Fund, a non-LSC organization. Each program is generally comfortable with the level of expert support and assistance which is available at this time.

*Goals and steps to be taken:* Despite the differences between the various areas of the state, it is likely that legal services advocates could make effective use of research, pleadings and briefs of others. To this end, the programs should cooperate to establish the means to assure that the other programs in the state are routinely sent material that may be of interest to them, either via e-mail or hard copy as well as working to expand the State Bar's website to include information helpful to the State's legal services clients and those agencies and attorneys assisting them.

## **5) Coordination and Collaboration with the Private Bar**

***Current Situation:*** From a statewide perspective, the private bar is singularly uninvolved in the delivery of legal services to the poor. On an individual or local basis, however, the private bar assists to a level consistent with its ability to do so.

As discussed above, there is no statewide *pro bono* program, and there is no obligation imposed upon attorneys to provide a minimum, or quantifiable, amount of such work. It is even questionable whether such an obligation would be effective, considering the concentration of attorneys in some areas and the scarcity in others. Given the fiercely independent nature of the private bar, as reflected in the measures passed and rejected at the annual convention, it is highly unlikely that such a measure would be approved.

The private bar does not shirk from its ethical duty to assist the under-privileged; it merely chooses not to coordinate or quantify its efforts. However, in some of the state's relatively more populated areas, lawyers have created volunteer associations which attempt to coordinate the local bar's *pro bono* work. There are four such groups in the state at this time, located in the cities of Sioux Falls, Rapid City, Huron and Pierre. The groups do not share any sort of coordinator, equipment or technology; their levels of activity vary widely; their success in meeting local needs is not measured or ascertainable.

ERLS has extensive contact with the Second Circuit Pro Bono Project in Sioux Falls. This Project also has a component that works with law students at the University of South Dakota School of Law in Vermillion, some 60 miles away. However, the small size of the town of Vermillion drastically reduces the need for *pro bono* services in the area immediately surrounding the law school, while its distance from Sioux Falls tends to



prevent students from responding to the greater need there. The Second Circuit Pro Bono Project is an active organization from which ERLS receives a satisfactory level of support and assistance.

BHLS has contacts with the Pennington County Legal Assistance Project in Rapid City. Approximately 130 area attorneys have volunteered to take referrals from BHLS at reduced or no fee. These cases are primarily in the areas of Family law involving domestic violence, though a number of cases have also involved other legal areas within BHLS priorities.

DPLS has a working relationship with a voluntary association of attorneys in the Pierre area. This organized body accepts cases for no fee or at reduced rates, particularly upon referral from DPLS. In January 1998 it became necessary to close the DPLS branch office located in Pierre and to absorb that service area into other DPLS branch offices. DPLS personnel met with this group to discuss the effects of that action and to find ways to address the anticipated increase in need. An agreement was reached which appears, in the short time since it was effected, to have been satisfactory.

The fourth *pro bono* group, located in the smaller city of Huron within the area served by ERLS, is far less organized and active, taking only a handful of cases per year.

The greatest level of private bar involvement within the state is through the PAI components of BHLS and DPLS, and through the Judicare program administered by ERLS. LSC regulations require the expenditure of 12.5% of a program's LSC funds on private bar involvement, and both BHLS and DPLS have developed similar methods to ensure that involvement and to spend the necessary funds.

Through the Divorce Pilot Project, BHLS refers 10-15 domestic abuse cases per year to private attorneys on a reduced-fee basis; these services are free to the client and the reduced fee is paid by BHLS from its PAI funds. The Executive Director is responsible for the operation of this component; the list of available attorneys, records of cases both open and closed, with progress notes and performance evaluations, are all maintained. BHLS provides consultation to these attorneys in Poverty law issues, provides malpractice insurance coverage for the specific cases, and permits access to BHLS's library materials, pamphlets, equipment, and certain clerical services. There is also reimbursement for out-of-pocket expenses up to a specified amount. BHLS awards annual certificates of appreciation to private attorneys involved in this process, as well as an award, duly publicized, to the attorney who has donated the most time during the year.

The process is similar at DPLS, though frequently requiring greater effort. It is often difficult to find private attorneys who are eligible to receive PAI payments and who are also willing to do so. Members of the program's governing board are prohibited by regulation from receiving such payments, so DPLS must look to others to accept these cases. In many instances, there are no others, so attorneys from further away are contacted. Many private attorneys in rural areas do *pro bono* work on their own and are unwilling to take additional cases without compensation. DPLS's PAI rates are \$35/hour for out-of-court work and \$45/hour in-court. Accepting even these payments is considered *pro bono* activity by many lawyers. Most of the attorneys willing to assist in this manner are located at some distance from the DPLS branch offices, and unless some formal arrangement is made they are unwilling to provide other forms of assistance such as

telephone intake, community education and the like. Indeed, membership on the DPLS governing board can legitimately be considered as *pro bono* work, considering the unusual degree of time and expense involved. DPLS's board meetings are regularly held in Pierre, which can be hundreds of miles from the attorney's residence. Attendance at a board meeting frequently consumes a whole day or more, without compensation except reimbursement for travel costs.

As a Judicare program operating in a more populated area, the concerns facing ERLS are different in a number of ways. For instance, budgeting to spend 12.5% of the annual LSC award is not an issue. However, cultivating and maintaining an adequate panel of attorneys willing to accept Judicare cases can be difficult, especially in the rural areas.

Since the private attorneys are frequently experienced in areas of the law for which they accept cases, it is unlikely that PAI attorneys need or desire training. (ERLS has given workshops to area attorneys interested in learning about disability issues.) Private lawyers are very willing to mentor the local legal services attorneys, as indeed they might for any new attorney in the area. This mentoring and sharing process ignores county lines or service areas, and has been in existence as long as the legal services programs themselves. There is no organization or coordination; it merely exists. The converse sometimes occurs as well, and experienced legal services attorneys are willing to share their library resources, model pleadings, and expertise upon request.

*Goals and steps to be taken:* The programs should continue to maintain strong professional relationships with local attorneys. It is unlikely that statewide or regional

coordination of *pro bono* or PAI involvement will develop in the near future, so the focus will remain at the local level. The programs should enhance their contacts with the Civil Legal Aid and Pro Bono committees of the State Bar Association, since in the absence of any mandatory *pro bono* requirement, keeping such issues before the bar will maintain lawyer participation.

**6) Diversified Funding and Coordination of Resource Development Efforts**

*Current Situation:* The three programs have a history of purely local efforts to obtain funding in addition to that provided by LSC, and have met with varying degrees of success. BHLS has been successful in developing a network of local stakeholders to augment its annual LSC grant. DPLS has been successful in maintaining its network of local stakeholders while always searching for new monies to supplement its current activities.

In addition to its LSC grant, BHLS also receives funds from the United Way, CDBG funds, a grant from the South Dakota Adult Services and Aging for its OAA services, from the state IOLTA proceeds, and from HUD (for its Housing Counseling component).

DPLS receives only 4% of its budget from sources outside the Legal Services Corporation. These other sources include the OAA and IOLTA grants, similar to those received by the other programs; an IOLTA grant from the North Dakota bar and a grant from the State of North Dakota from filing fee surcharge monies (for services to one North Dakota county which also contains a portion of the Standing Rock Sioux Indian Reservation); and payments received from court appointments (primarily state and federal

criminal defense, and state child-neglect cases). DPLS has found that many of the other area stakeholders are themselves either state- or federally-funded agencies, or are non-profit organizations, all of which are interested in the provision of legal services to the poor but none with the ability to support the same monetarily. Its remote locations means that it is isolated from resources that might be available in urban areas, such as in-kind donations of office equipment and staff. The interest and availability of volunteer law students over the summer waxes and wanes. DPLS cannot afford to financially compensate its summer interns, and the availability of such assistance has been greatly reduced by budget cuts. Several NAPIL-funded interns have been placed with DPLS and the program has attempted to host students from the South Dakota School of Law who are performing the clinical portion of their academic studies, but there has been very little interest by the students themselves in working in such remote locations. The program has been more successful in having students from tribal colleges do internships with the program; though these are not law students, often seeking paralegal or criminal justice degrees, some can provide direct client services while others are limited to purely clerical support. DPLS has also placed numerous individuals from several tribes' JTPA programs in its branch offices, utilizing them for clerical work from answering phones to shelving books.

Nonetheless, DPLS continues its efforts to expand its funding base. A major addition to its administrative offices was funded by a grant from the Bush Foundation, and like the other programs, DPLS has filed an application for funds to supplement its work in the area of domestic violence from the US Department of Justice.

**DPLS has considered seeking financial support from the eight Indian tribes within its service area, most of which have opened casino operations in the last five years. Although a few, smaller tribes have profited from gaming enterprises: the majority of gaming operations have produced modest returns and funds from gaming have only scratched the surface of the poverty facing most Native Americans. In considering this, however, the program has also yet to resolve how to deal with the obvious potential conflict-of-interest which would result from its representation of individual tribal members in matters adverse to the Tribe itself. This would obviously create substantial problems if funding for DPLS had been obtained from that Tribe.**

**Within recent years the programs were strong supporters of a state measure for a court filing-fee surcharge for the benefit of legal services programs in South Dakota. The bill was finally passed by the legislature, only to be vetoed by the governor. Since then the pattern of the legislature has been to reduce taxes and to systematically cut budgets in state programs. The opportunity to seek any type of state appropriation, renew the filing-fee surcharge effort, or other governmental budgetary relief does not seem to exist at the present time. The programs are in continuing contact with the State Bar association concerning contributions and support from this source, but the Bar's IOLTA participation has always been purely voluntary and as a result IOLTA funds have not constituted significant portions of any program's budget.**

**This year the State Bar Association funded a study to determine the feasibility and apparent success of a fundraising campaign. Performed by The Fundraising Project in April 1998, the study examined the possibility of raising funds for the benefit of the state's**

legal services programs through a variety of means, including charitable events, a major donor drive, a direct appeal to all practitioners, and a resurrection of the court filing fee surcharge. One charitable event has already been held, with predictably low results for the first attempt. Whether and how to effectuate the suggestions raised by the study is an issue to be addressed in continuing State Planning processes, as well as in further discussions with the State Bar.

*Goals and steps to be taken:* Experience has indicated that the economic and political climate in South Dakota is generally not supportive of statewide or governmental support of Legal Services. Yet such trends can be changed given the application of sufficient time and energy. Besides continuing their efforts with local funding sources and area stakeholders, the programs are considering unified efforts to seek and obtain whatever additional financial support may be available from public sources, the State Bar and its members.

This may best be accomplished through the programs' joint “coalition” or “advisory council” (however it may be named), which would be a continuation and expansion of the current “State Planning Committee.” This entity will be discussed in greater length in the section immediately following, but should serve to focus attention on Legal Services in general, its accomplishments and its needs. The pursuit of additional funding sources will be one of its most urgent concerns, and the specific goals and actions to be taken should be left for the each board to determine.

## **7) Configuration of a Comprehensive, Integrated Statewide Delivery System**

***Current situation:* South Dakota's poor are served by only three separate and independent legal services programs. Two provide direct services, and one is mostly (though not entirely) a Judicare system. (ERLS provides direct services to residents of the Sioux Falls area, the largest city in the state.) Legal Services has been operating in South Dakota since 1967, when "South Dakota Legal Services" (now DPLS) was created under the Office of Economic Opportunity. In spite of the obstacles and disadvantages of practicing in this sparsely-populated and impoverished area, South Dakota's legal services have a proud tradition of providing high-quality, effective legal representation to the poor and underprivileged of the state. All three programs can cite high-profile, high-impact litigation in which they have been directly involved, yet their commitment to providing direct services to the most needy has always remained high and there was little disruption in focus or continuity when the latest Congressional restrictions were imposed.**

**As indicated at the outset of this report, South Dakota consists of three distinct geographic, cultural and/or jurisdictional regions, which for ease of discussion will be referred to as the "eastern," "central," and "western" regions. Each is presently served by one legal services program which maintains a physical presence there: BHLS in the west, DPLS in the central, and ERLS in the east. The central region is where most of the state's Indian reservations are found. Some may assert that the eastern and western areas are sufficiently alike to be considered as one; yet no one can disputes the unique nature of the vast central portion, with its numerous jurisdictional and governmental divisions, different**



ethnic and cultural heritage, and distinct legal background and status, that physically separates these other two regions.

The programs have established eight offices in the state. ERLS and BHLS have one office each, located in Sioux Falls and Rapid City, respectively, which are the two largest cities in the state. DPLS has six offices, as follows: Pine Ridge, on the Pine Ridge Indian Reservation; Mission, on the Rosebud Indian Reservation; Ft. Thompson, on the Crow Creek Reservation and also serving the adjacent Lower Brule Reservation; Eagle Butte, on the Cheyenne River Reservation; Ft. Yates, North Dakota, on the Standing Rock Reservation and also serving Sioux County, North Dakota; and in Sisseton in the far northeast corner, on the Lake Traverse Indian Reservation. The Yankton Sioux Tribe, with its tribal headquarters in Wagner, is served by "circuit riding" from the Mission office of DPLS. The Flandreau Sioux Tribe is within the area served by ERLS. All three programs have formerly had more offices than they currently do, but have been forced to close them due to budget cutbacks. The most recent closure was the DPLS office in Pierre (in January 1998) and the absorption of that service area into that served by the Ft. Thompson office.

Each DPLS office is staffed with at least one attorney (two offices have two attorneys), and most have a paralegal who is licensed to practice in the local tribal court, and is thus on an equal footing there with the law-trained members of the tribal bar. DPLS management staff includes two experienced attorneys filling the positions of Executive and Litigation Directors, an Administrator, and necessary clerical support.

**ERLS and BHLS offices are staffed similarly to each other. Each has two staff attorneys and two paralegals (who of course function differently from their peers in DPLS). Management staff includes experienced attorneys filling the positions of Executive Director, an Administrator, and necessary clerical support.**

**Each of the attorneys occupying the "Director" position is expected to maintain a case load as well as performing the management and administrative duties of that position. Although the level of case activity varies between individuals, each routinely and regularly participates in all the activities of a case handler, including intake, investigation, case development, litigation, and also the more mundane activities of timekeeping and file compliance.**

**The Administrator of each program oversees a wide variety of activities. Activities that include payroll, accounts payable, preparation of financial statements by fund and/or cost center, preparation of budgets and grant applications, monitoring of cash flow and investments, collection and consolidation of data for statistical and other reports and drafting of said reports as required by program grants/contracts. Program Administrators are also responsible for maintaining and/or purchasing insurance policies, supply inventories, computers and other equipment as well as coordinating building maintenance for each office. It is the responsibility of each program Administrator to plan, implement and monitor the annual audit of program funds and to complete many of the tasks associated with the audit to keep costs as low as possible. In some instances, the program Administrator is also the program PAI Coordinator. Supervision of program clerical staff and other personnel management tasks are also part of the Administrative duties. Often,**

the Administrator acts as the middleman with public service agencies in the community, working with United Way to raise funding by calling local businesses.

*Reconfiguration Options:* Congress, through the Legal Services Act, has required that legal services to the poor be provided in an effective and economical manner so that quality legal services are provided to as many poor persons as possible. There is no question but that the poor of this state have received effective, high-quality representation pursuant to this legislation for more than 30 years.

Since South Dakota currently has 3 programs, any reconfiguration would mean the expansion of the 3 programs into 4 or more, or the contraction of the 3 programs into 2 or 1. (The State Planners have never considered the creation of more programs as a serious option, so it will be summarily disregarded.) Because these remaining options are few in number, they can be addressed individually.

*Reconfiguration into 2 programs:* The greatest hurdle to this option is the presence of DPLS right in the middle of the state. Although there are definite dissimilarities between the areas served by ERLS and BHLS, the many cultural, ethnic and jurisdictional distinctions found in the DPLS service area make DPLS the most unusual of the three. (Indeed, with its *eleven* different jurisdictions [eight Indian reservations, two states and the federal government], DPLS's service area is unique in the nation.) These differences are very real to the persons living here. Issues of tribal sovereignty, treaty rights, and racial discrimination are very much alive in South Dakota, and are the continuing source of cultural unrest and periodic racial tensions.

***Option A. Merger of DPLS with ERLS or BHLS:*** The majority of DPLS's governing board consists of Native Americans with legitimate concerns about the diminution of their voting strength in the event of a merger with either ERLS or BHLS, which serve predominantly non-Native constituencies. Political correctness aside, the United States Supreme Court has recognized the special status of Native Americans in the law, and no voluntary relinquishment should be expected or requested. For example, the DPLS board has consistently expected its Directors to reside in Indian Country to assure their sensitivity to the needs of the clients, a requirement that might be dismissed by a board involving others with different cultural experiences. Further, the distinct legal status of Native Americans has frequently required DPLS to advocate legal positions which are adverse to non-Indians, such as protecting tribal sovereignty; it would not be appropriate to create a governing board that might continually question these issues.

***Option B. Merger of BHLS and ERLS:*** At first blush this idea might seem worthwhile; upon closer examination, however, the merits are at least equaled, if not outweighed, by the disadvantages. Remembering that this option assumes the continuing independent existence of DPLS, this merger would result in a service area containing two portions separated by a band which is roughly 100 or miles across, or more. Worse, however, is the fact that the two major cities of this proposed service area (Sioux Falls and Rapid City) are on opposite ends of a large state, some 6-8 hours by car (in good weather). Though it is true that with today's technology it is increasingly possible to administer a program from afar, there is still no substitute for actual personal contact, review and supervision. Thus it would not be appropriate to administer the Black Hills region from a

base in Sioux Falls, or *vice versa*. A central location might be preferable. There is one city (Chamberlain) that is centrally located between these extremes, yet it would be nonsensical to relocate this new program's administrative office to Chamberlain, where no office currently exists, and when the greatest needs are elsewhere (or, alternatively, to administer it from Pierre, the state capital, which, however, is within DPLS's service area).

These considerations apply regardless of the delivery model of this proposed new program. (The current delivery systems include direct services in the far west and in Sioux Falls, and Judicare in the remaining parts of the east.) To effect any notable savings in cost, it appears necessary to close one of these two offices. To close the Rapid City office would mean the end of direct services in the west and the commencement of a Judicare model there, presumably administered out of Sioux Falls. Alternatively, to close the Sioux Falls office would mean the end of direct services to the state's largest city and an extension of the existing Judicare model to the entire eastern portion of the state. This program would presumably be administered out of Rapid City.

Such a merger would undoubtedly be construed by local stakeholders as a loss of local control and influence, and local support and funding currently existing may disappear. "Local support" is a concept that embraces more than money, including intangibles such as goodwill and cooperation. These intangibles can greatly affect a program's reception in a community and thus its ability to provide effective services. Without clear and convincing evidence that such an action is necessary, the State Planners and other interested persons have rejected both versions of this option.

***Reconfiguration into 1 program:*** Reconfiguration into one program, presumably administered from a central location, is an option that the State Planners do not feel is appropriate for South Dakota. The sheer size of the state and the considerations posed by the existence of the many Indian tribes present problems that, if not insurmountable, are at least very difficult at this time.

Reconfiguration into one program necessarily suggests the absorption of all the current interests and stakeholders into one new combination. The Board of Directors of DPLS has formally voiced its objections to any reconfiguration that would affect its "independence, integrity and control," in part for reasons that have been explained above. The Board of Directors of BHLS has expressed similar concerns. When reconfiguration means control is removed to a location hundreds of miles away, perhaps into an area with different local concerns and values, it is likely that local support will be diminished or lost altogether. This may be unimportant if statewide support predominated or were an important presence, but it is clear that support for Legal Services in South Dakota is a local, not a statewide, phenomenon.

***Weaknesses of the current system:*** The biggest weakness in the current structure is the inadequate funding that is received by each of the programs to serve the clients in their respective service areas and the lack of sources for additional funding in the State of South Dakota. Additional funding is needed to expand services that each program is currently providing. It could be said that the consolidation of the three programs in the state would save a little bit of money in administrative costs. It is our position that such consolidation would bring about many other problems that the programs do not have now. There would

be the loss of local control and support and services to our clients would decrease dramatically because much of the new consolidated program's human and monetary resources and efforts would be spent in setting up new procedures and networks and the hiring and training of the new personnel that would be needed to make the merger work at the expense of the very clients that we are here to serve. Priority setting would be next to impossible because of the varying needs of clients within the state. (The legal problems of Native American clients on the reservation differ from the problems of clients in urban areas.)

*Strengths of the current system:* Independence has enabled the programs to tailor their delivery systems and priorities to local needs, thereby best accomplishing the stated goal of providing the most effective services possible. Independence is achieved by a program being governed by a board that is knowledgeable of and sympathetic to problems of the clients in said program's service area. Quoting the current LSC President in a recent letter approving a request for a waiver of board composition requirements, Mr. John McKay says "As DPLS' funding and clients are both primarily Native American, it is of great importance to the success of the program that it have substantial Native American representation among both the attorney and client members of its Board." Should DPLS be forced to merge with one or more of the other South Dakota legal services programs, that independence will be lost when the governing board of the "reconfigured program" is also restructured.

Also, the programs have a physical presence within their areas, and are not perceived as some distant, unresponsive bureaucratic agency. Clients are aware of the

**current configuration and know how to access services when they are in need of help.**

**The most recent final report on the performance review conducted by the Legal Services Corporation in 1994 states that “DPLS successfully lives up to its mission of providing the highest quality legal services and access to the legal system for its client community.” And further states that “DPLS faces unique challenges in the isolation, extreme poverty, the access problems faced by the client population as well as complex legal and jurisdictional problems inherent in the field of Indian law.”**

**One of the main strengths of BHLS lies in the fact that, since its inception in 1972, it has been and remains a community-based legal services organization. BHLS is part of the Black Hills United Way; as a United Way agency it receives substantial funding from United Way and is also an important part of the network of United Way agencies. This network plays an important role in providing a full range of services, legal and otherwise, to poor people in the Black Hills area. In addition, and due to its community-based nature, BHLS receives CDBG funding for its operations and provides substantial input to the community regarding the use of CDBG funds in the areas of community development, housing, etc.**

**BHLS is also an active member of other community groups, such as the Rapid City Homeless Coalition and the Pennington County Health and Human Services Board. This fosters the development of more personal relationship between BHLS staff and local agency personnel, thereby improving communication and cooperation in providing a full range of services to poor people.**



**Members of BHLS’s Board of Directors, both attorney and lay members, are extremely active in BHLS affairs. Both the Board President and Vice-President are readily available for advice and consultation regarding matters affecting BHLS. BHLS Board members are also extremely active in their respective communities and are extremely effective “ambassadors” for legal services in general and BHLS in particular.**

**Another strength of BHLS is its smaller size and the fact that it is essentially “self-contained” (i.e. one main office). This allows for daily interaction between staff members and close monitoring and supervision of both casework and financial matters by the Executive Director and Program Administrator. BHLS’s Executive Director also handles a substantial caseload along with his administrative duties. There exists daily supervision of staff attorneys’ and paralegal’s legal work as well as an almost constant exchange of ideas. This “self-containment” with an “on-site” Executive Director and Program Administrator provides constant monitoring of the quality of legal work and the efficient running of the program’s financial affairs.**

**Any type of consolidation, reconfiguration, or merging of programs would result in the loss of most, if not all, of the above-referenced advantages. Loss of local control would result in less program and community involvement. Reallocation of resources would result in the diminishing of client services in some areas. Day-to-day supervision of staff upper management would become obsolete. The loss of BHLS’s identity as a community-based organization would jeopardize community funding sources. While it has been posited that reconfiguration would result in savings of administrative costs, this claim is dubious and no hard data has been produced to justify this position.**

***Weakness of proposed reconfiguration models:*** The size of the state of South Dakota suggests that the system of local administration and supervision that currently exists best assures the delivery of quality services. Anything less than what is currently available, considering the impacts of recent budget reductions, is unacceptable. Any alternative arrangement which does not protect the independence of DPLS should be rejected for a number of legitimate reasons, while retaining the presence of DPLS in the central portion of the state reduces any benefits of consolidating BHLS and ERLS. Loss of local control may mean loss of local support, particularly if the administration of Legal Services became publicly perceived as just another distant bureaucratic affair, unresponsive to local needs.

***Strengths of proposed reconfiguration models:*** There may be a perception of better coordination and a higher degree of responsiveness to statewide legal issues.

***Goals and steps to be taken:*** It is a goal of the State Planners to increase the communication and interaction between the state's three programs. This process allows the greater involvement of interested parties and stakeholders, while at the same time permitting the programs to work on issues affecting more than their own program. Some of these issues have been mentioned in earlier sections of this report, such as intra-state referrals of cases; fundraising; and relations with the State Bar.

To accomplish this, the programs have accepted an idea provided at one of the public meetings: to consider creating a new entity with a demonstrated interest in Legal Services, including others in addition to Legal Services staff, to study and discuss issues that cut across program boundaries, act as a conduit for contact with the public and the bar, and provide non-binding advice to the programs' governing boards. The exact composition of this entity has not yet been determined, but the programs agree that it

should include, at the least, the current Directors as well as representatives of the State and Tribal bars and judiciary. The programs recognize that participation on this board will be burdensome to those involved, since it will likely have to meet in a central location (such as Pierre), meaning representatives from Sioux Falls and Rapid City will have extensive travel and time.

The programs believe that this council will provide valuable assistance in the resolution of current and future problems, may permit greater success in efforts such as fundraising, and reduce any public perception of fragmentation or disarray. The programs are anxious to complete the final details and to receive the outside support that is envisioned

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